MAJLIS PERBANDARAN PULAU PINANG

v.

DATUK KRISHNA KUMAR TN SHARMA

HIGH COURT MALAYA, PENANG
T SELVENTHIRANATHAN J
[ORIGINATING SUMMONS: 24-563-1992]
24 AUGUST 1998

LOCAL GOVERNMENT: *Rates - Arrears of assessment - Vacant land - No movable property to attach - Repeated issuance of notices and warrants of attachment - Whether costs of notices and warrants recoverable - Whether local authority may issue warrants of attachment repeatedly - Whether application to registrar must be made first - Procedure to recover arrears of rates and fees in respect of vacant holding with no property to attach - Local Government Act 1976, ss. 146 to 151*

The plaintiff applied to the registrar of the High Court pursuant to s. 151 of the Local Government Act 1976 ('the Act') for an order to attach and sell four holdings of land belonging to the defendant in order to recover arrears of rates and other sums incurred for the issuance of notices and warrants to attach the holdings. The said lots of land were vacant lots on which there was no movable property which could be attached. The defendant objected to that part of the sum which the plaintiff claimed as costs for repeatedly issuing the said notices and warrants of attachment. The registrar allowed the objection and gave judgment to the plaintiff minus the sum objected to. The plaintiff appealed.

Held:

[1] A reading of ss. 146 to 151 of the Act shows that in the specific circumstances of the holdings in question, which were vacant with no movable property to be attached, as spelt out in the proviso to s. 148(2) of the Act, the local authority was to act in the following manner. Firstly, a notice in Form E of the First Schedule to the Act should be served calling on the owners of the holdings to pay the arrears within fifteen days of the posting or delivery of the notice in accordance with the provision to s. 148(1) of the Act. If the arrears remain unpaid, the local authority is required to affix a notice in Form H of the First Schedule to the Act on a conspicuous part of any one of the holdings to the effect that procedure for the recovery of the arrears which are due is to be instituted under s. 151 of the Act unless the arrears of the rates specified in the said Form H are paid within seven days of such affixation.

Consequently, the local authority should proceed to apply to the registrar under s. 151(1) of the Act to order the attachment and sale of the holdings without further ado.

[2] It is not open to a local authority to issue warrants of attachment repeatedly under s. 148 of the Act where the holdings are vacant and there are no movable property whatsoever on any of them capable of being attached. The peremptory terms in which the proviso to s. 148(2) of the Act enjoins a local authority to act where there is no movable property to be attached, as in the case of a holding which is vacant or unoccupied, effectively prevent the local authority from exercising a discretionary power not to proceed with the attachment and sale of the holdings as it chooses but instead to repeatedly issue notices and warrants of attachment under s. 148 of the Act.

[3] After having served the notice in Form E of the First Schedule to the Act, a local authority still does not have any power under s. 148 of the Act to itself in the first place issue a warrant of attachment in respect of immovable property. Section 151(1) of the Act makes it crystal clear that an application must be made to the registrar to order the attachment and sale of any holding or holdings in respect of which arrears of rates have accrued. Therefore, a local authority cannot seek to recover fees for issuing notices and warrants of attachment repeatedly which it was not authorised by the Act to so issue.

Per curiam:

[1] The power given to a local authority to fix a fee on unpaid half yearly assessments in s. 147(1) of the Act simply means that the local authority may increase or decrease the applicable fee in its discretion as the situation demands and not that it may impose multiple fees in respect of a single arrear of rate.

[Appeal dismissed with costs.]

Cases referred to:

Generation Products Sdn Bhd v. Majlis Perbandaran Klang [1997] 4 CLJ Supp 489 ***(aff)***

National Land Finance Co-Operative v. Director General of Inland Revenue [1993] 4 CLJ 339 ***(cit)***

Pemungut Hasil Tanah v. Kam Gin Paik & Ors [1986] 1 CLJ 283 ***(cit)***

Legislation referred to:

Federal Constitution, art. 96

Interpretation Acts 1948 & 1967, ss. 54, 108

Local Government Act 1976, ss. 130, 146, 147(1), 148(1), (2), 149, 151(1), (4), (5)

Other sources referred to:
Statutory Interpretation: A Code, FAR Bennion, pp 636-641, 659-664, 692-702
Venkataramaiya's Law Lexicon with Legal Maxims, Hon'ble Justice MC Desai, 1986, 2nd edn, vol 2, pp 1028-1029, vol 3, pp 2002-2003

For the plaintiff - Gerard Samuel; M/s Presgrave & Matthews
For the defendant - T Gunaseelan; M/s A Zahari, Kanapathy Thulasi

Reported by Cindy Chan

JUDGMENT

T Selventhiranathan J:

All references in this judgment to "the Act" means the Local Government Act 1976, and to a section by itself means that particular section of the Act. All references to subsections and provisoes, on the one hand, and Forms, on the other, shall accordingly be read in the context in which they appear in the appropriate provision of the Act being referred to.

The plaintiff, pursuant to s. 151, applied to the registrar of the High Court ("the registrar") for an order to attach and sell four holdings of land situated in Mukim 18, Bandar Tanjung Bungah, Pulau Pinang ("the holdings") belonging to the defendant in respect of which arrears of rates, assessed pursuant to s. 130, had accrued. The plaintiff sought to recover these arrears or rates ("cukai") which had been imposed in respect of the holdings and to also recover other sums ("bayaran") incurred for the issuance of notices and warrants to attach the holdings, amounting to a total sum of RM5,452.50 for the period from 30 June 1982 to 31 December 1991 and continuing, together with interest at six per centum per annum.

At the hearing before the registrar, objection was taken by the defendant to a sum of RM2,034 which the plaintiff claimed as the costs of issuing the notices and warrants of attachment repeatedly in respect of the holdings over the said period. The registrar allowed the objection and gave judgment for the plaintiff minus the sum objected to.

The plaintiff appealed against this decision of the registrar, which appeal I heard. After hearing arguments, I was of the view that the registrar had arrived at a correct decision in the matter and I accordingly dismissed the appeal with costs.

I have now been informed that the plaintiff has appealed against my decision to the Court of Appeal pursuant to leave granted by that court on 24 June 1998 to do so, the notice or appeal being filed on 3 July 1998. I accordingly give my reasons for upholding the decision of the registrar.

In confirming the said decision, I was of the view that the plaintiff was precluded by the clear language of the proviso to sub-s. (2) of s. 148 from issuing notices and warrants of attachment repeatedly in respect of the arrears of rates and claiming the fees for their issuance when it was common ground between the parties that the holdings were vacant lots on which there was no movable property which could be attached.

In this regard, ss. 146 to 151 have to be read as a whole to fully appreciate the manner in which action is to be taken under the Act to recover arrears of rates and fees properly allowed to be recovered. For this purpose it would be appropriate to set out sequentially those six sections of the Act which read as follows:

> 146. Rates to be first charge.
>
> **All rates** shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and **if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.**
>
> 147. Proceedings in default.
>
> (1) If any sum payable in respect of any rate remains unpaid at the end of February or August, as the case may be, the owner or owners shall be liable to pay the same together with such fee as the local authority may fix from time to time.
>
> (2) **If any such sum** or any part thereof **remains due and unpaid** by the end of February or by the end of August in each year, as the case may be, **it shall be deemed to be an arrear and may be recovered as provided in section 148.**
>
> 148. Proceedings for recovery of an arrear.
>
> (1) **For the recovery of an arrear the local authority may issue a warrant of attachment in Form F** of the First Schedule hereto **and may seize** by virtue thereof **any movable property, belonging to the owner or occupier liable to pay the same,** which is **found within the local authority area and may also seize any movable property,** to whomsoever belonging, which is **found on the holding** in respect of which the arrear is due:
>
> **Provided that no warrant of attachment shall be issued by the local authority unless it has served a notice, in Form E** of the First Schedule hereto, posted or delivered to the owner or any one of the owners, if more than one, at the last known address, calling on him **to pay the arrear within fifteen days** of the posting or delivery.

(2) **The warrant shall be executed by an officer** of the local authority **who shall make an inventory of the property attached** thereunder, **and** shall at the same time **give notice in Form G** of the First Schedule hereto, **to the person in possession of the property at the time of attachment**:

Provided that where in the opinion of the officer executing the warrant the value of the movable property to be attached is of a lesser value than the arrear to be recovered or **there is no movable property to be attached as in the case of a holding which is vacant or unoccupied no such inventory need be made and in such a case he shall affix a notice in Form H** of the First Schedule hereto **on some conspicuous part of the holding or any one of the holdings in respect of which the arrear is due** to the effect **that procedure for the recovery shall be instituted under section 151.**

(3) Such officer may break open in the daytime any house or building for the purpose of effecting such attachment.

(4) **The fee for a warrant of attachment shall be** of such amount as the local authority may fix from time to time and shall be **costs of the attachment**.

149. Sale of property attached.

(1) Unless the arrear with costs be paid within seven days from the date of the attachment the property attached or such part thereof as may be necessary shall be sold by public auction:

Provided that where the property seized is of a perishable nature or where [the] expense of keeping it in custody will exceed its value it may be sold at once.

(2) The expenses of the maintenance of livestock and the custody of movable property shall be costs of the attachment.

150. Application of proceeds of sale.

The proceeds of sale shall be applied in satisfaction of the arrear together with interest thereon at the rate of six per centum per annum and costs, and the surplus, if any, shall be paid to the person in possession of the property at the time of attachment.

151. Attachment and sale of holding.

(1) **If the arrear cannot be recovered in the manner provided in section 148 it shall be lawful for the Registrar of the High Court** upon application made by the local authority, or by any officer of the local authority authorised by the local authority in that behalf, **to order the attachment and sale of the holding or holdings in respect of which the arrear has accrued.**

(2) Such attachment and sale may be effected in the manner provided by the law relating to civil procedure for the execution of a decree by attachment and sale of immovable property.

(3) The Registrar of the High Court shall, from the proceeds of sale, provide first for the costs of attachment and sale, then for payment to the local authority of the amount of the arrear, together with interest thereon at the rate of six per centum per annum and costs, and in the event of there being any surplus remaining the Registrar shall, if he is satisfied as to the right of any person claiming such surplus, pay the amount thereof to him, and if he is not so satisfied, shall place the amount on deposit in the Treasury to be held in trust for the person who may ultimately succeed in establishing his claim thereto.

(4) The local authority may in its discretion refrain from seizing and selling, or may release from attachment, any property lawfully seizable under section 148 where such property is the property of the occupier, being a tenant, of the holding or of a person not liable to pay an arrear due in respect of such holding.

(5) Where the property is the property of a tenant-occupier, the local authority shall refrain from seizing and selling or shall release from attachment such property:

Provided that the tenant-occupier pays to the local authority the rent of such holding as it falls due until the arrear is satisfied or until the termination of his tenancy and in any such case, notwithstanding anything contained in sub-section (1), such holding may be attached and sold.

(6) The amount of any rent paid by a tenant-occupier to the local authority under the provisions of subsection (5) may be deducted by such tenant-occupier from the next and following payments of rent to the owner of the holding. [Emphasis added]

A reading of the above sections shows that in the specific circumstance of the holdings in question, which were vacant and also on which there was no movable property to be attached, as spelt out in the proviso to sub-s. (2) of s. 148 and underscored above, the plaintiff, **after first having served a notice in Form E of the First Schedule to the Act calling on the defendant to pay the arrears within fifteen days of the posting or delivery of the notice in accordance with the proviso to sub-s. (1) of s. 148 and the arrears remaining unpaid** (emphasised), was then required to affix a notice in Form H of the First Schedule to the Act on some conspicuous part of any one of the holdings to the effect that procedure for the recovery of the arrears which were due was to be instituted under s. 151, and consequently the plaintiff should have proceeded to apply to the registrar under sub-s. (1) of s. 151 to order the attachment and sale of the holdings without further ado.

It was not open to the plaintiff to issue warrants of attachment repeatedly under s. 148 where the holdings were vacant and there was no movable property whatsoever on any of them to be capable of being attached. The peremptory terms in which the proviso to sub-s. (2) of s. 148 enjoins the plaintiff to act

where there is no movable property to be attached, as in the case of a holding which is vacant or unoccupied, effectively removes any colour or pretension of a claim by the plaintiff to exercise a discretionary power not to proceed with the attachment and sale of the holdings as it chooses but instead to repeatedly issue notices and warrants of attachment under s. 148.

In fact, in respect of a vacant holding, after serving first the notice in the said Form E calling on the defendant to pay the arrears within fifteen days of the posting or delivery of the notice, the plaintiff has to apply to the registrar under sub-s. (1) of s. 151 to obtain an order to attach and sell the holding after affixing on a conspicuous part of the holding the notice in Form H of the First Schedule to the Act pronouncing that the procedural machinery for the attachment and sale of the holding pursuant to an order of the High Court to be applied for under s. 151 was about to be set in motion unless the arrears of the rates specified in the said Form H were paid within seven days of such affixation.

Subsections (4) and (5) of s. 151 spell out the instances where the plaintiff may, in its discretion under sub-s. (4), and mandatorily shall, under sub-s. (5), refrain from seizing and selling, or release from attachment, any property lawfully seizable under s. 148. Those instances only arise where, under sub-s. (4), the property in question is movable property and it is that of the occupier, being a tenant, of the holding or of a person not liable to pay an arrear due in respect of such holding, or where, under sub-s. (5), the property in question is again movable property and it is that of the tenant-occupier, and that, in the latter instance, the tenant-occupier pays to the plaintiff the rent in respect of such holding as it falls due until the arrear is satisfied or the tenancy is terminated. However, there appears to be some ambiguity at the tail-end of the proviso to sub-s. (5) of s. 151 where the words "... and in any such case, notwithstanding anything contained in sub-s. (1), such holding may be attached and sold" do not appear to clearly spell out the "any such case" scenario where the holding may still be attached and sold. However, since that matter is not in issue before me, I express no opinion thereon and I have only touched upon it in this judgment to draw the attention of the legislature to the ambiguity.

To my mind, after having served the notice in the said Form E as stipulated earlier in this judgment, the plaintiff still does not have any power under s. 148 to itself in the first place issue a warrant of attachment in respect of immovable property, in this case the four vacant holdings of land. Subsection (1) of s. 151 makes it crystal clear that an application must be made to the registrar to order the attachment and sale of any holding or holdings in respect of which arrears of rates have accrued. **Ergo**, the plaintiff in these circumstances cannot seek to recover fees for issuing notices and warrants of

attachment repeatedly which it was not authorised by the Act to so issue in respect of the defendant's holdings which were vacant lots. It could only issue the first notice in the said Form H in accordance with the proviso to sub-s. (2) of s. 148, after having served the notice in the said Form E before that, and it should then have made an application to the registrar for an order of attachment and sale of the holdings under s. 151.

Apart from citing the provisions of the Act, a few other authorities were also advanced on behalf of the parties. Counsel for the plaintiff placed extensive reliance on the following excerpts from the second edition of *"Statutory Interpretation: A Code"* by FAR Bennion:

(a) "Part XIX: The Mischief and its Remedy", from pages 636 to 641

(b) "Part XX: Purposive Construction", from pages 659 to 664

(c) "Part XXI: Construction Against Absurdity", from pages 692 to 702

while counsel for the defendant relied extensively on the following:

(a) Article 96 of the Federal Constitution

(b) Sections 54 and 108 of the Interpretation Acts 1948 and 1967

(c) *"Venkataramaiya's Law Lexicon with Legal Maxims"* revised by the Hon'ble Justice MC Desai, 2nd Edition 1986: Vol 2 at pp. 1028-1029 and Vol 3 at pages 2002-2003

(d) *Pemungut Hasil Tanah v. Kam Gin Paik and Other*s [1986] 1 CLJ 283; [1986] 1 MLJ 362

(e) *National Land Finance Co-Operative v. Director General of Inland Revenue* [1993] 2 AMR 52: 3581

I did not, however, find the authorities cited to be directly relevant in deciding the issue at hand which turned upon the interpretation of the specific provisions of the Act referred to in this judgment and upon which issue there does not appear to be available any reported decision directly on point.

However, in *Generation Products Sdn Bhd v. Majlis Perbandaran Klang* [1997] 4 CLJ Supp 489, a decision involving other aspects of the application of the provisions of the Act, the High Court at Shah Alam had occasion to consider whether, *inter alia*, in addition to the fee which a local authority could fix from time to time under sub-s. (1) of s. 147 where the landowner was in arrears of rates, the local authority could also impose a penalty for late payment of the arrears and a further fee "by way of a percentage of [the] unpaid rate as a fee under s. 147(1) of the Act".

In holding that the local authority could not do so, Faiza Thamby Chik J ruled as follows at p. 495 of the report of that case:

> The local authority by virtue of section 147(1) of the said Act is entitled to fix a fee on unpaid half yearly assessments but the fee must be one which is proportionate to the added costs of monitoring the unpaid assessment and can only be levied once, whereafter the unpaid assessment with the fee is collectable under section 148 of the said Act and section 147 does not empower nor authorise the local authority to collect the fee by way of a late penalty fine in the manner that the defendant have *[sic]* proceeded to levy.

Although the issues, in addition to that stated above, in *Generation Products Sdn Bhd* (please refer to pp. 491-492 of the report of that case for a full recitation of the declaratory orders sought) are not germane to the issue which was before me for decision in the present case, I am in agreement with Faiza Thamby Chik J that the power given to the local authority to fix the fee under sub-s. (1) of s. 147 does not carry with it a concomitant power to impose an additional fee which the court in that case described as being "by way of a late penalty fine".

To my mind, the power given to the local authority to fix the fee from time to time in sub-s. (1) of s. 147 simply means that the local authority may increase or decrease the applicable fee in its discretion as the situation demands and not that it may impose multiple fees in respect of a single arrear of rate.

In my view, once a sum payable in respect of any rate remains unpaid at the end of either February or August, as the case may be, then the owner of the land becomes liable to pay the sum together with the fee fixed by the local authority, as described in sub-s. (1) of s. 147. In these circumstances sub-s. (2) of that section provides that the sum payable shall be deemed to be an arrear, recoverable as provided in s. 148. The local authority must then proceed to act under s. 148 if it wishes to recover the arrears which must include, as a first step, the serving of the notice in Form E of the First Schedule to the Act calling on the owner or occupier of the holding to pay the arrears within fifteen days of the posting or delivery of the notice.

As I have already discussed the panoply of operation of ss. 148 to 151 earlier in this judgment, the same need not be further repeated here. Having said that, I could not find any arguable point to support the plaintiff's position in the present case and accordingly dismissed its appeal with costs.